

**ARKANSAS DEPARTMENT OF EDUCATION
AMENDING ADMINISTRATIVE REGULATION**

NUMBER: ADE 124

TITLE: Waivers of the Earnings Limitations Under the Teacher Retirement System

EFFECTIVE DATE: September 18, 2001

STATUTORY AUTHORITY: Ark. Code Ann. § 24-7-708(f), § 6-11-105 and Act 1146 of 2001

NECESSITY AND FUNCTION: To establish the conditions and procedures for requesting from the Board of Trustees of the Teacher Retirement System, or its designee, a waiver of the earnings limitation under Ark. Code Ann § 24-7-708(f) and § 24-7-502.

PAGES FILED: ADE 124-1 through ADE 124-4

Raymond Simon, Director
Arkansas Department of Education

PROMULGATION DATE: August 13, 2001

CONTACT PERSON: Dr. Bobbie Davis
#4 Capitol Mall
Little Rock, AR 72201
501-682-1297

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM
COMMITTEE

DEPARTMENT/AGENCY Arkansas Department of Education
DIVISION Internal Administration
DIVISION DIRECTOR Dr. Bobbie Davis
CONTACT PERSON Dr. Bobbie Davis
ADDRESS #4 Capitol Mall, Room 103-B, Little Rock, AR 72201
PHONE NO. 501-682-1297 FAX NO. 501-682-4487

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after ☐ Short Title of this Rule ☐ below.
- D. Submit two (2) copies of this questionnaire attached to the front of two (2) copies of your proposed rule and mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

- 1. What is the short title of this rule?
Rules and Regulations Governing Waivers of Earnings Limitations under the Teacher Retirement System.
- 2. What is the subject of the proposed rule?
The rules and regulations establish the conditions and procedures for requesting from teacher retirement a waiver of the earnings limitations.
- 3. Is this rule required to comply with federal statute or regulations?
Yes _____ No X _____

If yes, please provide the federal regulation and/or statute citation.

- 4. Was this rule filed under the emergency provisions of the Administrative Procedures Act? Yes _____ No X _____
If yes, what is the effective date of the emergency rule?

When does the emergency rule expire?

Will this emergency rule be promulgated under the regular provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes _____ No X _____

Does this repeal an existing rule? Yes _____ No X _____
If yes, please provide a copy of the repealed rule.

Is this an amendment to an existing rule? If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes.

6. What state law grants the authority for this proposed rule? If codified, please give Arkansas Code citation.
A.C.A. 24-7-502, A.C.A. 24-7-708, A.C.A. 6-11-105.
7. What is the purpose of this proposed rule? Why is it necessary?
This rule establishes the procedures and conditions under which a waiver of earnings limitation can be granted by Teacher Retirement.
8. Will a public hearing be held on this proposed rule? Yes X _____ No _____
If yes, please give the date, time, and place of the public hearing.
July 20, 2001, 10 a.m., at the ADE Auditorium.
9. When does the public comment period expire?
On August 8, 2001.
10. What is the proposed effective date of this proposed rule?
September 18, 2001.
11. Do you expect this rule to be controversial? Yes _____ No X _____
If yes, please explain.
12. Please give the names of persons, groups, or organizations which you expect to comment on these rules. Please provide their position (for or against) if known.
Arkansas Education Association
Arkansas Association of Educational Administrators
Arkansas School Boards Association
Arkansas Rural Education

PLEASE ANSWER ALL QUESTIONS COMPLETELY

July 28, 1995

DEPARTMENT Arkansas Department of Education
DIVISION Internal Administration
PERSON COMPLETING THIS STATEMENT Dr. Bobbie Davis
TELEPHONE NO. 501-682-1297 FAX NO. 501-682-4487

FINANCIAL IMPACT STATEMENT

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

Rules and Regulations Governing Waivers of Earnings Limitations.

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?
Yes _____ No X _____
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation.

2001-02 Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other _____
Total 0

2002-03 Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other _____
Total 0

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation?

2001-02 Fiscal Year

0

2002-03 Fiscal Year

0

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

2001-02 Fiscal Year

\$1,500

2002-03 Fiscal Year

\$1,500

July 28, 1995

DEPARTMENT OF EDUCATION
FISCAL IMPACT STATEMENT
OF PROPOSED REGULATION
(In compliance with Acts 884 and 1253 of 1995)

Regulation Title:

Rules and Regulations Governing Waivers of Earnings Limitations under the Teacher Retirement System.

Summary Description of Regulatory Proposal:

These rules establish the conditions and procedures under which waivers of earnings limitations can be granted.

Cite Statutory Authority for this Regulatory Proposal:

A.C.A. 6-11-105, A.C.A. 24-7-502, A.C.A. 24-7-708.

- I. Fiscal Impact on the Department: (include whether impacts are non-recurring or recurring)
 - A. Resources Required - Personnel, equipment, office space.
The Department designates one staff member part-time to handle the waiver requests. No additional staff are required. The Department does have to prepare and execute public notice of the hearing and handle recording the hearing and input from participants. No office space is specifically assigned to this task. Copies of the proposed rules and regulations needed for distribution were provided by the Department print shop.
 - B. Time Required for Implementation.
It will take the Department approximately four months to implement the regulation.
 - C. Procedural Changes.
The Department will not be changing the established procedures for handling the waivers. The revisions proposed are two specific areas qualified to be granted a waiver-critical academic areas and schools in academic distress. These changes were required as a result of Act 1146 of 2001.
 - D. Other.
None
- II. Fiscal Impact on Local School District or Others? (Include whether impacts are non-recurring or recurring)
 - A. Resources Required - Personnel, equipment, office space.
School Districts do not have to add additional staff or dedicate any specific resources other than telephone time and the letter of request for waiver. The requests are required annually so that impact is recurring.

- B. Time Required for Implementation.
Schools apply for the waiver. The Department makes its determination. If approved, the request goes to Retirement. The Retirement Director makes a determination and notifies the Department and then the Department notifies the district of the approval and the effective date. So a district cannot begin a contract with that retiree until that notification is received. The entire approval process takes about three weeks. This process is recurring since requests are made annually.
- C. Procedural Changes.
There are no procedural changes for the school districts. The waiver procedure was implemented in 1999.
- D. Other.
None

III. Additional Comments.
None

Prepared by: (Name) Dr. Bobbie Davis
(Title) Assistant Director, Internal Administration
(Date) 6/15/01

Arkansas Department of Education
Rules and Regulations Governing Waivers of the Earnings Limitations
Under the Teacher Retirement System
August 13, 2001

1.00 Legislative Authority

- 1.01** These regulations shall be known as the Arkansas Department of Education (ADE) Regulations Governing Waivers of the Earnings Limitations Under the Teacher Retirement System.
- 1.02** These regulations are enacted pursuant to the State Board of Education's authority under Ark. Code Ann. § 24-7-708(f), Ark. Code Ann. § 24-7-502, and Ark. Code Ann. § 6-11-105.

2.00 Purpose

It is the purpose of these regulations to establish the conditions and procedures for requesting from the Board of Trustees of the Teacher Retirement System, or its designee, a waiver of the earnings limitation under Ark. Code Ann. § 24-7-708(f) and Ark. Code Ann. § 24-7-502.

3.00 Definitions

- 3.01** Academic Distress: schools identified annually by the State Board of Education as being in Phase I, Phase II, or Phase III academic distress as defined in A.C.A. 6-20-1602.
- 3.02** Active Employee: A person currently employed and contributing to the teacher retirement system or a person not currently employed but who is not receiving teacher retirement benefits.
- 3.03** Critical Academic Areas: academic areas identified annually by the State Board of Education as being critical academic teacher shortage areas.
- 3.04** Director: The Director of the Department of Education
- 3.05** Earnings Limitation: As outlined in Arkansas Code Ann. § 24-7-708, the maximum amount that a retirant employed by a public employer whose employees are covered by the Arkansas Teacher Retirement System can earn during a twelve month period ending June 30. The earnings limitation rate is established annually by the Arkansas Teacher Retirement System Board of Trustees.

- 3.06 Emergency Interim Employee:** An employee considered essential for effective and efficient administrative, instructional, and/or financial management of a school district or other entity covered by the Teacher Retirement System.
- 3.07 Emergency Situations:** Examples of emergency situations would include:
- a. A catastrophic occurrence forces an essential licensed employee to be unable to fulfill his/her essential job duties.
 - b. An appropriately-licensed and appropriately-qualified, active employee is unavailable to fill an essential vacant position.
 - c. A catastrophic occurrence forces an essential classified employee to be unable to fulfill his/her essential job duties.
 - d. An unforeseen situation occurs within a district or other entity covered by the Teacher Retirement System that results in the Director declaring an emergency situation.
- 3.08 Mentoring Activities:** Technical assistance and monitoring activities implemented to support the revised Arkansas teacher and administrator licensure process.
- 3.09 Retirant:** A person currently receiving retirement benefits from the Arkansas Teacher Retirement System.
- 3.10 Waiver:** An approval of a set of conditions under which a retirant will not be held to the earnings limitation as defined by the Arkansas Teacher Retirement System Board of Trustees.

4.00 Conditions

Waivers for the earnings limitation may be requested under the following conditions:

- 4.01** A school district or other entity covered by the Teacher Retirement System is left without a superintendent or other essential employee under emergency situations and needs to hire an interim employee who is a retirant for the remainder of that fiscal year.
- 4.02** ADE determines as outlined in Ark. Code Ann. § 6-20-1601 and other applicable ADE rules and regulations that an Arkansas public school district needs technical assistance to such an extent that a professional services contract is needed with a retirant(s) to assist the district for a determined period of time.
- 4.03** ADE desires to contract with a retirant(s) to provide mentoring activities for training and professional development as part of the revised Arkansas teacher and administrator licensure process as defined by the State Board of Education.

- 4.04** The school district is officially identified by the State Board of Education as being in Phase I, Phase II, or Phase III academic distress.
- 4.05** A school district desires to hire a retirant to teach in one of the critical academic teacher shortage areas identified by the State Board of Education.

5.00 Limitations

- 5.01** Waivers of earnings limitations will be requested annually and shall be effective until the end of that fiscal year.
- 5.02** Waivers of earnings limitations may be renewed annually for up to a maximum of three (3) consecutive years for each individual retirant except in the case of an emergency interim employee which shall be approved until the end of that fiscal year.
- 5.03** A member of the Arkansas Teacher Retirement System must have terminated covered employment for at least 30 days before being eligible to apply for a waiver of the teacher retirement earnings limitation.
- 5.04** A retirant cannot be hired under the earnings limitation waiver to teach the exact position vacated by the retirant to the extent that this action would violate any current existing provisions and/or laws governing pension funds regulated by the Internal Revenue Service.

6.00 Procedures

- 6.01** Application letters requesting a waiver of earnings limitation in the case of emergency interim employees shall be submitted in writing to the Director. The application letter shall include:
 - a.** A justification of the need for the waiver.
 - b.** Documentation that a currently licensed and/or appropriately qualified applicant who is not a retirant was not available to be employed.
 - c.** The retirant to be employed.
 - d.** The length of time the retirant is to be employed.
- 6.02** In all instances where ADE is requesting the waiver to provide technical assistance or mentoring activities for school districts, the letter requesting a waiver of earnings limitation shall be submitted in writing from the appropriate assistant director to the Director. The application letter shall include a justification of the need for the waiver, the retirant(s) to be contracted, and a description of the scope of the technical assistance or mentoring activities to be rendered.

- 6.03 The Director shall appoint a three (3) member committee from ADE to determine a recommendation to be presented to the Director regarding the approval of the waiver, including the hiring of the retirant(s) and the compensation for any retirant(s) employed or contracted pursuant to the waiver being considered.**
- 6.04 The Director shall make the request for the waiver of earnings limitation to the Teacher Retirement System Board of Trustees or its designee.**
- 6.05 No payment for services rendered by any retirant(s) under the conditions of the waiver can occur prior to the effective approval date of the waiver of earnings limitation.**
- 6.06 The final decision regarding the granting of the waiver will rest with the Board of Trustees of the Teacher Retirement System or its designee.**
- 6.07 School districts shall maintain audit files which list personnel receiving waivers and provide documentation regarding the justification for the waiver.**